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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-598

No. COA20-866

Filed 2 November 2021

Mecklenburg County, No. 18-CVS-24192

ANTHONY J. GRIER, Plaintiff,

v.

ROUNDPOINT MORTGAGE SERVICING CORPORATION, PRIVATE CAPITAL GROUP, LLC, ARCPE 1, LLC, SMOKY MOUNTAIN EQUITY, LLC, MACKENZIE INVESTMENTS, LLC, KENNETH DANIEL GOODWIN, PETER DARRIN RICHARD, and TD BANK, NA, Defendants.

Appeal by Plaintiff from orders entered 20 March 2019 and 16 April 2019 by Judge Karen Eady-Williams and Judge Forrest D. Bridges, respectively, in Mecklenburg County Superior Court. Heard in the Court of Appeals 25 August 2021.

*Anthony J. Grier, Pro Se.*

*Parker Poe Adams & Bernstein LLP, by William L. Esser IV, for Defendant-Appellees RoundPoint Mortgage Servicing Corporation and Private Capital Group, LLC.*

*Hutchens Law Firm LLP, by Jeffrey A. Bunda, for Defendant-Appellee ARCPE 1, LLC.*

*Alexander Ricks, PLLC, by Felton E. Parrish, for Defendant-Appellee Smoky Mountain Equity, LLC.*

*Hamilton Stephens Steele & Martin, PLLC, by M. Aaron Lay, for Defendant-Appellee Mackenzie Investments, LLC.*

*Offit Kurman P.A., by Zipporah Basile Edwards, for Defendant-Appellees Kenneth Daniel Goodwin, Peter Darrin Richard, and TD Bank, NA.*

INMAN, Judge.

¶ 1 Plaintiff-Appellant Anthony J. Grier (“Mr. Grier”), the former owner of real property secured by a mortgage deed of trust, sued his former lender, a mortgage servicing company, and successor owners of the property to void a foreclosure sale and quiet title in his favor. The trial court dismissed his lawsuit as untimely and otherwise failing to state claims for which relief can be granted. Mr. Grier appeals. For the reasons explained below, we dismiss Mr. Grier’s appeal in part because he failed to serve notice of appeal with respect to one defendant-appellant and affirm the trial court’s decision in part.

## I. FACTS & PROCEDURAL HISTORY

¶ 2 Mr. Grier’s complaint alleges the following:

¶ 3 In 1998, Mr. Grier executed a promissory note secured by a deed of trust for real property located at 2912 Dunaire Drive, Charlotte, NC (“the property”), serviced by Defendant RoundPoint Mortgage Servicing Corporation (“RoundPoint”). Mr. Grier defaulted on his loan with RoundPoint in 2011.

¶ 4 RoundPoint engaged a trustee to foreclose upon the property. The Clerk of Court found that the debt was valid and allowed the foreclosure sale to proceed. Mr.

Grier appealed to the Superior Court and eventually to this Court, posting bond to stay the foreclosure action while his appeal was pending. Nonetheless, a new substitute trustee for RoundPoint, Rogers, Townsend & Thomas P.C. (“RTT”), sold the property to RoundPoint at foreclosure sale on 14 May 2012.

¶ 5 Mr. Grier, through counsel, demanded return of the property and threatened suit against RoundPoint and its corporate predecessor Private Capital Group, LLC (“PCG”) in June of 2013. RoundPoint and PCG sued Mr. Grier in 2014, seeking a declaratory judgment that the foreclosure sale was void, judicial foreclosure of the property, and a monetary judgment for Mr. Grier’s debts. They dismissed the lawsuit against Mr. Grier in May of 2017.

¶ 6 Mr. Grier filed a petition for bankruptcy on 12 April 2018. On asset and liability schedules submitted in the bankruptcy proceeding, Mr. Grier affirmed, under penalty of perjury, that he did not own any claims against third parties, including claims not asserted in a lawsuit or demand for payment.

¶ 7 Despite his attestation in the bankruptcy proceeding that he owned no claims against anyone, on 31 December 2018 Mr. Grier filed this action against RoundPoint

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and the other defendants<sup>1</sup> seeking, in relevant part, declaratory judgment that the foreclosure sale and deed to the property were void as well as to quiet title.

¶ 8

Each defendant filed a motion to dismiss Mr. Grier's suit. The trial court granted RoundPoint and PCG's motion to dismiss Mr. Grier's lawsuit pursuant to North Carolina Rules of Civil Procedure 12(b)(6) and (7) for the following reasons:

(1) the Complaint was not timely filed and the claims therein are barred by the applicable statutes of limitations; (2) the claims asserted in the Complaint are further barred by the doctrine of judicial estoppel because [Mr. Grier] failed to disclose the alleged claims that are the subject of this lawsuit as assets in his pending Chapter 13 bankruptcy case . . . ; (3) [the complaint] failed to join a necessary party (i.e. the trustee under the deed of trust whose foreclosure sale [Mr. Grier] is attempting to have declared null and void); and (4) [the complaint] otherwise fails to state a claim upon which relief could be granted as to [RoundPoint] and [PCG].

The trial court similarly granted the remaining defendants' motions to dismiss Mr. Grier's claims for failure to state a claim for which relief could be granted under Rule 12(b)(6), as barred by the applicable statutes of limitations, and as barred by the doctrine of judicial estoppel. Mr. Grier filed written notice of appeal of the orders entered 20 March 2019 and 16 April 2019.

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<sup>1</sup> The remaining defendants—ARCPE 1, LLC ("ARCPE 1"), Smoky Mountain Equity, LLC ("Smoky Mountain Equity"), Mackenzie Investments, LLC ("Mackenzie Investments"), Kenneth Daniel Goodwin ("Mr. Goodwin"), Peter Darrin Richard ("Mr. Richard"), and TD Bank, N.A. ("TD Bank")—are all subsequent purchasers of the property and a part of the property's chain of title.

## II. ANALYSIS

### 1. *Mackenzie Investments' Motion to Dismiss*

¶ 9

Mackenzie Investments has filed a motion to dismiss Mr. Grier's appeal because he did not file notice of appeal from the trial court's order granting their motion to dismiss. The trial court heard Mackenzie Investments' motion to dismiss on 16 April 2019. But the record does not include the written order of the trial court granting the motion and Mr. Grier has not identified or included in the record the trial court's judgment dismissing his claims against Mackenzie Investments. We cannot discern whether Mr. Grier's notice of appeal with respect to Mackenzie Investments complied with our rules of appellate procedure. *See* N.C. R. App. P. 9(a) (2021) ("In appeals from the trial division . . . review is solely upon the record on appeal, the transcript of proceedings, if one is designated, and any other items filed pursuant to this Rule 9."); N.C. R. App. P. 3(d) (2021) ("The notice of appeal . . . shall designate the judgment or order from which the appeal is taken."). Accordingly, we grant Mackenzie Investments' motion to dismiss Mr. Grier's appeal.

### 2. *Trial Court's Orders Granting Motions to Dismiss*

¶ 10

Mr. Grier argues on appeal that the trial court erred in granting Defendants' motions to dismiss his complaint. But Mr. Grier challenges only two of the trial court's grounds for dismissal—as barred by the doctrine of judicial estoppel and statutes of limitations. He does not challenge the trial court's dismissal on the other

ground common to all Defendants, that the complaint fails to state a claim upon which relief could be granted under Rule 12(b)(6). So Mr. Grier has abandoned that argument. N.C. R. App. P. 28(a) (2021) (“The scope of review on appeal is limited to issues so presented in the several briefs. Issues not presented and discussed in a party’s brief are deemed abandoned.”).

¶ 11 Since Mr. Grier has abandoned any challenge to the trial court’s conclusion that his complaint was subject to dismissal for failure to state a claim, we affirm the orders of the trial court dismissing the complaint on that basis. And, because we affirm the trial court’s order on this ground, we are not compelled to consider the trial court’s alternative grounds for dismissal. *See, e.g., State ex rel. Edmisten v. Tucker*, 312 N.C. 326, 357, 323 S.E.2d 294, 314 (1984) (“In view of our conclusion that the trial court correctly dismissed the complaint on [one ground] as to all defendants, we need not address the trial court’s alternative ground for dismissal of the complaint[.]”); *Bulloch v. N.C. Dep’t of Crime Control & Pub. Safety*, 223 N.C. App. 1, 10, 732 S.E.2d 373, 380-81 (2012) (“[W]here a lower court’s ruling is based on alternative grounds, a court on appeal need not address the second alternative ground where the appellate court determines the first ground was correct.”).

### III. CONCLUSION

¶ 12 For the reasons explained above, we dismiss Mr. Grier’s appeal against

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Mackenzie Investments and otherwise affirm the trial court's orders dismissing the complaint.

DISMISSED IN PART; AFFIRMED IN PART.

Judges WOOD and JACKSON concur.

Report per Rule 30(e).